IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 777 of 1990
to
SPECIAL CIVIL APPLICATION No 780 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEEKEELON CRIMPERS

Versus

P S BALKRISHNAN & ORS.

Appearance:

1. Special Civil Application No. 777 of 1990
MR DG CHAUHAN for the Petitioner
MR JJ YAJNIK for Respondents Nos. 1-4

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 13/09/2004

COMMON ORAL JUDGEMENT

All these petitions involve identical issues. Therefore, the petitions are decided by this common judgment.

The petitioner in Special Civil Application No.777/1990, M/s.Neekeelon Crimpers, a partnership firm,

challenges the common judgment and order dated 30th July, 1988 passed by the Labour Court, Bharuch in Recovery Applications Nos.584-A/1987, 585/1987, 586/1987 and 587/1987 and the order dated 30th May, 1989 made on Misc. Application No.14/1988.

The petitioner in Special Civil Application No.778/1990, M/s.Deeceelon Crimpers, a partnership firm, challenges the common judgment and order dated 30th July, 1988 passed by the Labour Court, Bharuch in Recovery Applications Nos.588/1987 and 589/1987 and the order dated 30th May, 1989 made on Misc. Application No.16/1988.

The petitioner in Special Civil Application No.779/1990, M/s.Deepak Industries, a partnership firm, challenges the judgment and order dated 30th July, 1988 passed by the Labour Court, Bharuch in Recovery Application No.582/1987 and the order dated 25th May, 1989 made on Misc. Application No.13/1988.

The petitioner in Special Civil Application No.780/1990, M/s.New Deeceelon Crimpers, a partnership firm, challenges the common judgment and order dated 30th July, 1988 passed by the Labour Court, Bharuch in Recovery Applications Nos.583/1987 and.....

No.15/1988.

For the sake of brevity the petitioners in the present group of petitions are hereafter referred to as "the petitioner-firms".

The petitioner-firms have their industrial establishments at A.2, 2501, G.I.D.C. Industrial Estate, Ankleshwar, Bharuch. The respondents - workmen were employed by the petitioner-firms as skilled labourers. The workmen approached the Labour Court, Bharuch under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") for recovery of various amounts being the amount of overtime wages. Each workman claimed that while he was in service he was made to work overtime for 4 hours daily. Accordingly, each workman claimed overtime wages as under :

Recovery Appn. Old No.	Recovery Appn. New No.	Date of filing	Name of the workman	Period of overtime wages	Amount of overtime wages	Date of termination of service

claimed claimed
of workman
JJJJ

JJJJ

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been restored. The petitioner-firms ought to have been granted the opportunity of appearing before the Labour Court and of contesting the Recovery Applications.

As to the service of the notice; except the bare statement made in the memo of the applications the petitioner-firms had led no evidence to prove that the notices issued by the Labour Court were not received by the petitioner-firms. The Labour Court has, after perusing the record and the acknowledgement receipts, recorded that the notice issued in each Recovery Application was received by the petitioner-firms. Nevertheless, the petitioner-firms did not appear before the Labour Court. The orders made by the Labour Court in Recovery Applications, therefore, cannot be said to have been made ex parte. In absence of any evidence led by the petitioner-firms before the Labour Court and in view of the finding of due service recorded by the Labour Court, the impugned orders made on Misc. Applications cannot be interfered with in the present petitions. The challenge to the orders of the Labour Court made on Misc. Applications should, therefore, fail.

Mr.Chauhan has submitted that the orders made on the Recovery Applications are also not sustainable. He has read out the contents of the Recovery Applications filed before the Labour Court and has submitted that each workman had filed identical application for recovery of the amount of wages for the alleged overtime. He has submitted that there was no previous adjudication with respect to the workmen's right to receive such overtime wages. In absence of previous adjudication by the competent authority or by the competent court, the Labour Court, exercising power under Section 33C(2) of the Act, had no authority to entertain the said Recovery Applications and to allow the same. The impugned orders made on the Recovery Applications, therefore, be declared to be null and void. In support of this contention, Mr.Chauhan has relied upon the judgment of the Division Bench of this Court in the matter of Gujarat Water Supply and Sewerage Board & Anr. v/s. Ketanbhai Dinkarray Pandya [2003(3) GLR 2281].

In the said matter before the Division Bench, the workmen had claimed overtime wages. Considering the scope of Section 33C(2) of the Act and power of adjudication vested in the competent authority under the Minimum Wages Act, 1948 the Hon'ble Bench held that "the jurisdiction of the Labour Court under Section 33C(2) of the Act can be invoked only if it is found by the competent authority that the workman is entitled to

receive money or any benefit which is capable of being computed in terms of money from his employer i.e. there should be prior adjudication by the competent authority or the Court."

In view of the settled law that power of Labour Court under Section 33C(2) of the Act is that of a Court of execution, unless the right of a workman to receive money is determined as aforesaid, such money claim cannot be entertained or allowed in exercise of jurisdiction conferred by Section 33C(2) of the Act. The Labour Court, Bharuch has erred in relying upon the bare statements made by the workmen and in allowing the claim for overtime wages made by the workmen.

In view of the above discussion, the petitions are partially allowed. The impugned judgments and orders dated 30th July, 1988 passed by the Labour Court, Bharuch in Recovery Applications Nos.582/1987 to 589/1987 are quashed and set aside. The said Recovery Applications stand rejected. Rule nisi issued in each petition is made absolute to the aforesaid extent. The parties shall bear their own cost. The Registry shall maintain copy of this order in each petition.

(Ms. R.M.Doshit, J.)

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